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NASHVILLE • MEMPHIS • MUSIC ROW

424 CHURCH STREET, SUITE 2800  
NASHVILLE, TENNESSEE 37219-2386  
(615) 259-1450 • FAX: (615) 259-1470  
www.stokesbartholomew.com

GUILFORD F. THORNTON, JR.  
gthornton@stokesbartholomew.com

Direct Dial: 615/259-1492  
Direct Fax: 615/687-1507

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TN REGULATORY AUTHORITY  
DOCKET ROOM

October 11, 2002

The Honorable Sara Kyle, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243

RE: Generic Docket to Establish UNE Prices for Line Sharing per FCC  
99-355 and Riser Cable and Terminating Wire as Ordered in TRA  
Docket No. 98-00123

Docket No. 00-00544

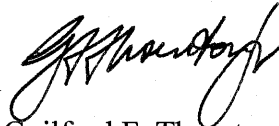
Dear Chairman Kyle:

Citizens Telecommunications Company of Tennessee, LLC ("Citizens") files this letter in response to your request for comments on the joint motion of United Telephone-Southeast, Inc. and Sprint Communications Company, L.P. recently filed in this matter. Citizens supports the joint motion and agrees that the Authority should suspend both its First Interim Order, issued April 3, 2002, and its June 27, 2002 Order on Petition for Stay and Request for Clarification.

In support of its position, Citizens adopts and joins in the comments of BellSouth Telecommunications, Inc. filed today, a copy of which is attached.

Should you have any questions or require anything further at this time, please do not hesitate to contact me.

Sincerely,



Guilford F. Thornton, Jr.

cc: Mike Swatts  
Gregg Sayre

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee**

In Re:       *Generic Docket to Establish UNE Prices for Line Sharing per FCC  
99-355 and Riser Cable and Terminating Wire as Ordered in TRA  
Docket No. 98-00123*

Docket No. 00-00544

**COMMENTS OF BELL SOUTH TELECOMMUNICATIONS, INC.  
IN SUPPORT OF JOINT MOTION OF UNITED TELEPHONE-SOUTHEAST, INC.  
AND SPRINT COMMUNICATIONS COMPANY, L.P. TO SUSPEND**

BellSouth Telecommunications, Inc. ("BellSouth") submits these Comments in support of the Joint Motion to Suspend filed by United Telephone-Southeast, Inc. ("United") and Sprint Communications Company, L.P. ("Sprint") on May 29, 2002 (the "Joint Motion"). BellSouth agrees that the Tennessee Regulatory Authority (the "TRA" or "Authority") should suspend its First Interim Order and its Order on Petition for Stay and Request for Reconsideration and Clarification.

On May 9, 2000, the TRA opened a generic docket for the purpose of establishing Unbundled Network Element ("UNE") prices per the FCC Line Sharing Order and Line Splitting Order and permanent prices for riser cable and Unbundled Network Terminating Wire per the TRA's Order in Docket No. 98-00123. The Docket was entitled *In Re: Generic Docket to Establish UNE Prices for Line Sharing Per FCC 99-355, and Riser Cable and Terminating Wire as Ordered in TRA Docket 98-00123*, Docket No. 00-00544.

The TRA entered a First Initial Order on April 3, 2002 and an Erratum on June 27, 2002, which, among other minor issues, changed the name of the First Initial Order to First Interim Order. After motions for reconsideration were filed by United

and BellSouth, the TRA deliberated on May 21, 2002, and entered an Order on Petition for Stay and Request for Reconsideration and Clarification on June 27, 2002 (collectively "the Prior Orders").

BellSouth has recently filed appeals from these orders.<sup>1</sup> Without repeating all of the grounds for appeal, BellSouth respectfully submits that the Authority's Prior Orders are fundamentally flawed as a matter of law. As Sprint and United point out in the Joint Motion, the FCC has authorized state commissions to establish unbundling and access obligations only where the state complies with the necessary and impair analysis required by Section 251(d)(2) of the 1996 Act.<sup>2</sup> None of the Prior Orders, however, even purport to apply the necessary and impair analysis required by law.

For example, in ordering BellSouth and Sprint to provide and install dual purpose line cards for next generation digital loop carrier ("NGDLC"), the TRA cited generally to 47 U.S.C. § 251(c) of the 1996 Act. No mention was made of the actual section of the 1996 Act that specifically authorizes the FCC to designate what network elements shall be subject to unbundling and access requirements. That section allows for further unbundling of the local telephone company's network but only after considering, "at a minimum, whether - (A) access to such network elements as are proprietary in nature is *necessary*; and (B) the failure to provide access to such

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<sup>1</sup> The appeal was filed in United States District Court, Middle District of Tennessee, Nashville Division on August 26, 2002. See Docket No. 3-02-0830. A protective appeal was also filed in the Court of Appeals for the Middle Section of Tennessee on the same date. See Docket No. M2002-02054-COA-R12-CN. If the Authority grants the joint motion, BellSouth will file motions requesting that those Courts hold the appeals in abeyance in order to allow time for the Authority to consider these matters without expending time and resources defending the appeals in the meantime.

network elements would *impair* the ability of the telecommunications carrier seeking access to provide the services that it now seeks to offer." 47 U.S.C. § 251(d)(2) (emphasis added). As a consequence of this failure to even consider this pertinent section of the 1996 Act, by requiring BellSouth to provide dual purpose line cards for NGDLC, the Authority has effectively determined that BellSouth must unbundle parts of its packet switching network without performing the analysis required by the federal Act. The TRA should suspend its Order until, at a minimum, it employs the appropriate impairment test.

In addition to its failure to even attempt to apply the required "impairment" test, the TRA imposed the requirement to install dual purpose line cards for NGDLC even though the TRA in its Reconsideration Order acknowledged that this technology was not deployed in Tennessee by either United or BellSouth and that such technology is not compatible with the ILECs' systems. The Authority further acknowledged that "CLECs are not harmed, however, at this time because BellSouth has not yet deployed this technology in Tennessee." See Reconsideration Order at 7. To the extent that one of the purposes of the TRA's order was to insure that there was "parity" between the CLECs and BellSouth and Sprint, clearly such an effort was misplaced and inappropriate. Such a rationale provides no basis for the TRA's order.

As a final reason for suspending the TRA's Orders, since the entry of the TRA's Prior Orders, the FCC's line sharing order, the very basis of the TRA's Prior Orders, has been vacated by the United States Court of Appeals for the District of Columbia. That Court expressly vacated the rules of the FCC dealing with the obligation of ILECs to

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2 See Section 47 C.F.R. § 51.317.

offer line sharing.<sup>3</sup> Since the foundation of the TRA's Orders was based on the rules that have been vacated, serious doubt has been cast on the legal necessity for any ILEC to even offer line sharing, much less comply with other aspects of the Authority orders emanating from the earlier FCC line sharing order.<sup>4</sup>

As United and Sprint correctly point out in their Joint Motion, the Court of Appeals' decision was a "dramatic intervening event." This event took place after the Authority deliberated on the partial Motions for Reconsideration, and before the Authority entered its written order on June 27, 2002. As stated, the Authority deliberated on May 21, 2002 and the D.C. Court of Appeals issued its Order on May 24, 2002. The TRA, therefore, did not have the Order available to it when deliberating. Suspension of the Authority's Prior Orders would allow the Authority to take the Court's decision, as well as the FCC's response to that decision, into consideration, before making any final decisions on these important matters. At the very minimum, the Authority should extend the temporary stay it issued with respect to dual purpose line cards to the other aspects of the Prior Orders, and extend the date of the stay until the Authority has had the opportunity to review the parties' comments and the FCC's response to the Court of Appeals' Order.<sup>5</sup>

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3     *See United States Telecom Association v. FCC*, 290 F.3d 415 (D.C. Cir. 2002).

4     On September 4, 2002, the D.C. Court of Appeals denied the petition for rehearing filed by WorldCom. The D.C. Court also ordered that the vacatur of the FCC orders be stayed, but only until January 2, 2003. (*See* 2003 U.S. App. LEXIS 18823, copy attached). This means, of course, that the FCC has only until that date to act in response to the Court's Order or the vacatur of the line sharing Order takes effect.

5     As stated, the Authority stayed its decision on dual purpose line cards for NGDLC, but for six months only. The stay will expire in December, unless the Authority extends it or grants the Joint Motion.

A summary of these and additional grounds for BellSouth's appeal is set forth on the attached Complaint and Petition for Review filed in the United States District Court on August 26, 2002.

In conclusion, BellSouth respectfully joins in the Joint Motion and requests that the Authority suspend the Prior Orders and establish a procedural schedule to allow all parties to comment on the effect of the opinion issued by the United States Court of Appeals for the District of Columbia and the anticipated response to that Order by the FCC.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

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Guy M. Hicks  
333 Commerce Street, Suite 2101  
Nashville, Tennessee 37201-3300  
(615) 214-6301

R. Douglas Lackey  
675 W. Peachtree Street, Suite 4300  
Atlanta, Georgia 30375

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served on the parties of record, via U.S. Mail on October 11, 2002.

Jon E. Hastings  
Boult, Cummings, Conners & Berry  
P.O. Box 198062  
414 Union Avenue, Suite 1600  
Nashville, TN 37219

Charles B. Welch  
Farris, Mathews  
618 Church Street, Suite 300  
Nashville, TN 37219

R. Dale Grimes  
Bass, Berry & Sims  
315 Deaderick Street, Suite 2700  
Nashville, TN 37238-3001

Joshua M. Bobeck  
Swidler Berlin  
3000 K Street, NW, Suite 300  
Washington, DC 20007-5116

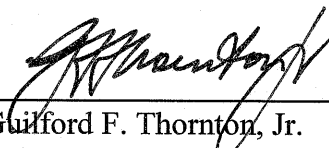
Guy M. Hicks, III  
BellSouth Telecommunications, Inc.  
333 Commerce Street, Suite 2101  
Nashville, TN 37201-3300

James Wright  
United Telephone - Southeast  
14111 Capitol Boulevard  
Wake Forest, NC 27587

James Lamoureux  
AT&T  
1200 Peachtree St., NE  
Atlanta, GA 30309

Henry Walker  
Boult, Cummings, Conners, & Berry  
414 Union Avenue, Suite 1600  
P.O. Box 198062  
Nashville, TN 37219-8062

William H. Weber  
Covad Communications  
1230 Peachtree St., NE, 19<sup>th</sup> Floor  
Atlanta, GA 30309

  
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Guilford F. Thornton, Jr.